

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CONNOR SHEA
Claimant

APPEAL NO: 21A-UI-19316-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/24/20
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Appeal
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 16, 2021, (reference 02) unemployment insurance decision that concluded he was overpaid \$8,141.00 in regular unemployment insurance benefits. After proper notice, a telephone hearing was conducted on October 25, 2021. The hearing was held jointly with appeal 21A-UI-19317-SN-T and 21A-UI-19319-SN-T. The claimant participated. Official notice of the administrative records was taken. Exhibit D-1 and D-2 were received into record.

ISSUES:

Whether the claimant's appeal was timely? Whether it has reasonable grounds to be considered otherwise timely?
Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 24, 2020.

The claimant filed for and received a total of \$4,810.00 in regular, state unemployment insurance benefits for the weeks between May 31, 2020 and September 26, 2020.

The unemployment insurance decision that disqualified the claimant from receiving unemployment insurance benefits has been affirmed in a decision of the administrative law judge in appeal 21A-UI-09670-SC-T. The claimant appealed 21A-UI-09670-SC-T seeking reversal from the Employment Appeal Board affirmed 21A-UI-09670-SC-T in 21B-UI-09670. The claimant did not appeal 21B-UI-09670 in district court.

A disqualification decision was mailed to claimant's last known address of record on August 16, 2021. The claimant did not receive the decision within ten days. At the time, the claimant had forwarded his mail from that residence to 1623 Bobcat Drive NW, Cedar Rapids, Iowa 52405. The claimant did not update his address with Iowa Workforce Development when he moved.

He received the decision on August 31, 2021. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 26, 2021. (Exhibit D-1) The appeal was not filed until August 31, 2021, which is after the date noticed on the disqualification decision. (Exhibit D-2)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973).

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The claimant received the decision in this case after the appeal period because he did not update his address. The delay is attributable to his actions rather than to Iowa Workforce Development Department. As a result, the claimant had a reasonable opportunity to file a timely appeal.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Assuming arguendo the administrative law judge has jurisdiction, the claimant was overpaid regular unemployment benefits.

Iowa Code section 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

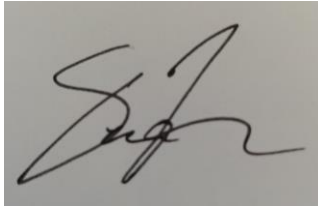
a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

Since the decision disqualifying the claimant has been affirmed, the claimant was overpaid \$4,810.00 in unemployment insurance benefits.

During the hearing, the claimant argued he was still eligible for benefits due to his reading of the claimant's handbook and other provisions. This kind of argument is not availing because this administrative law judge only had jurisdiction to evaluate whether the claimant was overpaid benefits. The issues regarding eligibility were evaluated in 21A-UI-09670-SC-T. The EAB affirmed that decision in 21B-UI-09670.

DECISION:

The unemployment insurance decision dated August 16, 2021, (reference 02), is affirmed. The appeal in this case was not timely, and the decision of the representative remains in effect. The claimant was overpaid \$4,810.00 in regular, state unemployment insurance benefits.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

November 5, 2021
Decision Dated and Mailed

smn/mh

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.